

LEGISLATIVE AUDIT DIVISION

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TO: Legislative Audit Committee Members
FROM: Jim Pellegrini, Deputy Legislative Auditor, Performance Audits
DATE: November 2004
RE: Follow-up Performance Audit - 05SP-07:
Child Protective Services (HJR 32), Department of Public Health and Human
Services, Department of Justice, and the Montana Supreme Court (orig. report 02P-02)

INTRODUCTION

House Joint Resolution (HJR) 32 passed by the 2001 Legislature requested a performance audit of the child protective services (CPS) system, which the Legislative Audit Committee approved. HJR 32 language stated the CPS process should be reviewed to ensure the Department of Public Health and Human Services (DPHHS) applies the law equally statewide. The performance audit report contained 17 recommendations addressed to one or more of the agencies involved in CPS system. Nine recommendations included two or more parts to a recommendation, for a total of 30 recommended actions.

This memorandum summarizes information on the implementation status of each audit recommendation.

Overview

The CFSD implemented 23 of the 30 recommended actions, is implementing four, and has partially implemented three. The DOJ implemented the four recommendations directed to the department. The Supreme Court implemented the three recommendations addressed to the judiciary.

Overall, the agencies have increased efforts to coordinate training and CPS activities.

The CFSD is continuing to address several recommendations as part of its program improvement plan to address areas identified during the federal review of CFSD activities. In several instances the CFSD indicated recommendations were not fully implemented because of limited resources.

BACKGROUND

The Child and Family Services Division (CFSD) within the Department of Public Health and Human Services (DPHHS) is assigned responsibility for meeting the department's statutory mandate to respond to reports of child abuse or neglect and provide protective services when necessary. This includes authority to take temporary or permanent custody of a child when ordered by the court. The child protective services (CPS) system is made up of numerous stakeholders, which include: CFSD, district courts, county attorneys, parents, and service providers.

To examine the implementation status of report recommendations, we:

- Reviewed agency responses to our requests for implementation status of recommendations made to their respective agency, which included specific information about agency implementation activities.
- Reviewed changes to statutes and rules to implement recommendations.
- Reviewed policies and other agency documentation to verify implementation status.
- Interviewed agency personnel about implementation efforts.

FOLLOW-UP AUDIT FINDINGS

The following sections summarize the report's findings and recommendations, and our assessment of the agencies' actions to implement the recommendations.

IMPROVE INTERAGENCY COMMUNICATION AND COORDINATION

Inconsistencies in CPS practices and noncompliance with CPS statutory requirements were identified. The following summarizes agencies involved in CPS activities.

- Child and Family Services Division. The CFSD is responsible for investigating allegations of child abuse and neglect and case management activities. Except in emergency situations, the CFSD may not remove children from a home without authority from a court.
- County Attorneys. County attorneys are responsible for "prosecuting" CPS cases for the CFSD. The Montana Department of Justice (DOJ) has some general oversight of county attorneys.
- Judiciary. District courts are responsible for determining whether cause exists for removing children from home or terminating parental rights. The Montana Supreme Court has general oversight of the state judiciary.

County attorneys and district court judges are locally-elected officials and exercise significant autonomy, which was a primary cause for the need to improve communication and coordination.

Recommendation #1

We recommend CFSD, the Department of Justice, and the Supreme Court continue to work to improve communication and coordination between the CFSD, county attorneys, and district court judges to increase CPS consistency and statutory compliance.

Implementation Status – Implemented

Agency responses indicated cooperative efforts to increase and improve communication and coordination by developing communication protocols and cooperatively developing and providing training for CPS stakeholders. Interagency efforts have included:

- Training for county attorneys and other legal professionals.
- Training for district court judges.
- Cooperative training for CFSD personnel.
- Videoconferencing of CFSD policies and procedures for CPS stakeholders.
- Continued discussion of CPS issues by the Court Assessment Program Advisory Council, an interagency advisory council.

IMPROVE CONSISTENCY OF CASE FILE DOCUMENTATION

CFSD file documentation indicated caseworkers gathered supporting documentation regarding case activities, and the district courts supported CFSD actions. However, file reviews also indicated inconsistencies in documentation, including:

- The level of detail provided in affidavits presented to district courts.
- Circumstances described in related affidavits and substantiation letters differed.
- CPS meetings and case notes were not always in files.
- Inconsistencies in file maintenance.

Recommendation #2

We recommend CFSD establish specific policies and procedures on acceptable types of case file documentation to improve consistency of information to better support social worker actions and decisions.

Implementation Status – Implemented

CFSD addressed this recommendation by modifying documentation standards such as:

- Implementing a pilot training curriculum on documentation, case recording, and writing affidavits.
- Implementing a safety assessment and planning model.
- Implementing a safety plan for children that requires caseworkers to provide specific information about what is required to protect a child.
- Developing a training program for all field supervisors and caseworkers.
- Implementing a case file documentation format in 2003.

The CFSD also developed and provided training on the new standards and documentation to CFSD personnel.

IMPROVE IDENTIFICATION OF SERVICE NEEDS FOR FAMILIES

While the CFSD provided services to families, audit work identified inconsistencies in CFSD activities related to determining family service needs and areas for improving CFSD efforts to provide services, including:

- Increasing use of family group decision making, which the CFSD has identified as a important tool for identifying and addressing family needs.
- Clarifying statutory authority for developing treatment plans for non-custodial parents or kin.
- Improving the consistency of treatment plans and clarifying expectations of treatment participants.

The inconsistencies indicated a need for additional management attention to ensure caseworkers are using strategies the CFSD has identified as important to family reunification.

Recommendation #3

In order to improve services provided to families, we recommend CFSD:

- A. Use family group decision-making on a more consistent basis.
- B. Establish a standardized, detailed treatment plan outline.

Implementation Status

Part A – Implemented

The CFSD provided family group decision-making training to all CPS caseworkers and plans to continue providing the training to new employees.

Part B – Being Implemented

The CFSD is developing a treatment plan outline as part of its program improvement plan, a response to areas for improvement identified during the federal review of CFSD CPS activities. CFSD's plan is to implement the recommendation by January 2006.

IMPROVE PLACEMENT DECISION DOCUMENTATION

While the audit found foster care placements generally appeared to comply with policy, the majority of files did not include documentation supporting placement decisions, such as:

- Reasons for placements or reasons for changing placements.
- Lack of documentation of social worker contact with children in foster care.
- Placements with non-custodial parents.
- Contact with non-custodial parents for potential placement.

To comply with state and federal requirements, the CFSD needs procedures to ensure all decisions are documented.

Recommendation #4

We recommend CFSD ensure all foster care placement actions are supported and clearly documented in CPS case files.

Implementation Status – Being Implemented

The CFSD implemented a training curriculum for documentation, case recording, and writing affidavits, which was distributed by December 30, 2002. The CFSD is also implementing a safety assessment protocol as part of its federally required program improvement plan, which the CFSD states will be completed by January 2006.

IMPROVE SUPERVISORY REVIEWS

Audit work indicated supervisors perform limited reviews of CPS case files. Issues related to supervisory review included:

- Inconsistent documentation of supervisory reviews of case files.
- Policy requirements for supervisory reviews are unclear.
- Supervisors often carry caseloads, which limits supervisory activities.
- Lack of ongoing performance appraisals of social workers and supervisors.

Recommendation #5

To improve supervisory review over CPS activities we recommend CFSD:

- A. Clarify policy on the type and frequency of supervisory review of case files.
- B. Expand existing policy to require supervisors to sign-off on elements listed on the master checklist.
- C. Review the caseloads of all social worker supervisors and reallocate caseloads where possible.
- D. Ensure performance appraisals are completed on social workers and social worker supervisors on a regular basis.

Implementation Status

Part A – Being Implemented

The CFSD implemented a policy requiring supervisors to document their review when a case is transferred or closed. According to CFSD management, policy addresses the need for documentation of supervisory review. However, the audit issue presented in the report included concerns about documentation of ongoing supervision of caseworker activities that CFSD's revised policy does not fully address.

Part B – Implemented

The CFSD implemented policy requiring supervisors sign off on the master checklist.

Part C – Implemented

The CFSD responded it reviewed supervisors' caseloads by December 2002, and modified its practices so supervisors only carry caseloads when there are no other options.

Part D – Partially Implemented

The CFSD has developed performance appraisals for supervisors and caseworkers. While supervisor performance appraisal forms indicate the appraisals are to be completed annually, the CFSD does not have a specific policy addressing the frequency of staff appraisals. According to CFSD management, neither the CFSD nor the department has policies addressing the frequency of performance appraisals.

IMPROVE THE CASE REVIEW PROCESS

There are numerous laws, rules, and CFSD policies staff must adhere to when providing protective services to children. Since there are so many specific requirements it can be difficult

for management and staff to readily determine compliance with laws, rules and policies, or identify areas where process efficiency should be improved. In addition to more frequent supervisory review of case files, the CFSD would benefit by implementing a quality control system to review the CPS process. A previous CPS performance audit (#89-29) recommended implementing an independent review process. The recommendation was implemented, but later eliminated.

Recommendation #6

We recommend CFSD implement a quality control system by periodically reviewing CPS case files and continuing to conduct stakeholder meetings.

Implementation Status – Implemented

The CFSD responded by indicating quarterly supervisor meetings now include a “peer review” of a sample of cases.

CLARIFY THE FAIR HEARING PROCESS

CFSD policies and rules for conducting fair hearings were unclear. Examples the audit identified included:

- Misunderstandings regarding who could request a fair hearing.
- Misunderstandings regarding the fair hearing process.
- Different objectives for the substantiation review panel and fair hearing officers.
- The fair hearing process was lengthy, which could create confusion among parents regarding a case.

Recommendation #7

To ensure a more consistent fair hearing process for CPS substantiation appeals, we recommend:

- A. DPHHS develop ARMs for substantiation fair hearings.
- B. CFSD develop policies and procedures specifically related to substantiation fair hearings.

Implementation Status – Implemented

Part A – Implemented

The CFSD implemented rules to address this recommendation in July 2004.

Part B – Implemented

The CFSD implemented policies addressing fair hearings in October 2002.

CLARIFY DIVISION AUTHORITY TO MAINTAIN INFORMATION REGARDING UNINVESTIGATED REPORTS

The CFSD commonly receives allegations of child abuse or neglect, which are not investigated because there was insufficient criteria to warrant an investigation. The CFSD retains these reports (CPI information), and may subsequently use the information to justify further investigation. When an allegation is investigated but no abuse or neglect occurred, the report is

considered “unfounded.” However, the difference between CPI information and “unfounded” reports is an “unfounded” determination resulted from an investigation. We questioned whether the CFSD has the authority to maintain CPI information indefinitely.

Recommendation #8

We recommend the department seek legislation to clarify its authority to maintain child protective services information on individuals where the department has determined children are not in danger and further investigations are not needed.

Implementation Status – Implemented

Statutes addressing this issue were modified during the 2003 Legislative Session. Statutes now require the caseworker and department destroy these records within 30 days of the conclusion of a three-year period if there are no other reports. The CFSD is in the process of developing administrative rules addressing the legislative changes.

ANALYZE CFSD ACTIVITIES AND CLARIFY MISSION

While CFSD management and personnel repeatedly mentioned limited staff and programmatic resources, the CFSD has not analyzed personnel caseloads and workloads. Also, while CFSD intervention services are an integral part of the social services system, providing intervention services can take social worker resources away from protective services. CFSD management and system stakeholders said the CFSD does not have the resources to effectively provide intervention and protective services. However, the CFSD has not prioritized its activities, and we concluded the CFSD and the Legislature need to evaluate CFSD’s primary mission.

Recommendation #9

We recommend CFSD:

- A. Establish a workload/caseload tracking system to further analyze social worker activities and to help establish division priorities with existing resources.
- B. Seek legislative clarification regarding the CFSD’s future mission if it formally determines child abuse intervention services is adversely affecting child protective services.

Implementation Status

Part A – Being Implemented

CFSD initially responded it was unable to identify a workload/caseload tracking system, and that limited resources impacted their ability to implement the recommendation. CFSD recently assigned a CFSD employee the responsibility for overseeing development of a tracking system. CFSD applied for and is receiving technical assistance through a U.S. Department of Human Services organization improvement program. CFSD personnel anticipate having usable data to analyze workload/caseload information by January 2006.

This issue was also addressed in the DPHHS Caseload Management performance audit (04P-09) issued in September 2004, which recommended the department improve caseload/workload management by developing management policies and procedures and establishing more useful

management reports using existing software. That report also stated the department could use existing practices in other divisions to improve CFSD caseload/workload management.

Part B – Partially Implemented

At the CFSD’s request, the 2003 Legislature passed a bill addressing intervention services, which the CFSD and the statute calls “voluntary protective services.” Statute now states the CFSD “may” provide voluntary protective services.

Although the statute helped clarify the CFSD’s mission regarding provision of voluntary protective services, the CFSD also responded its priorities are based on a risk and safety assessment. Consequently, high-risk situations may be handled using voluntary protective services. However, without completing a caseload/workload analysis, the CFSD has limited ability to fully address the report recommendation.

IMPROVE COMPLIANCE WITH THE ICWA QUALIFIED EXPERT WITNESS REQUIREMENT

The Indian Child Welfare Act of 1978 (ICWA) is a federal law establishing national policy declaring it is in the best interests of Native American children to promote the stability and security of Indian tribes and families. ICWA grants Indian tribes exclusive jurisdiction in any child abuse and neglect proceeding involving Indian children residing on reservations or temporarily living off a reservation. ICWA also protects tribal interests and extends protections to tribal members involved in child abuse and neglect proceedings in state courts, including a tribe’s right to intervene in CPS proceedings in state courts or to petition a state court to assume jurisdiction in ICWA cases.

Audit work indicated CPS activities by various involved entities do not always comply with the ICWA requirement that a qualified expert witness (QEW) testify at court proceedings involving an Indian child. Reasons for non-compliance included:

- Misconceptions about when a QEW is required to testify at CPS court proceedings.
- Limited numbers of QEWs.

Recommendation #10

- A. We recommend CFSD and the Department of Justice continue to coordinate efforts to identify and recruit qualified expert witnesses.
- B. We recommend CFSD, Department of Justice, and the Supreme Court re-emphasize ICWA’s qualified expert witness requirements as part of their training programs.

Implementation Status

Part A – Implemented

CFSD and the Department of Justice have cooperatively worked to address this recommendation. Activities include:

- Recruitment efforts to identify QEWs.

- Annual training for potential expert witnesses that includes information about their role in the legal process. Training includes preparing these persons for testifying in court and researching case files.
- Development of a QEW handbook that includes a listing of potential expert witnesses who usually meet the requirement for tribes in Montana. The listing also provides biographical information about potential expert witnesses, including tribal membership, affiliation, or other qualifications.

While CFSD and DOJ have increased efforts to identify and train persons who may provide expert testimony, only a judge can qualify an expert witness to offer their opinion of the child-rearing practices and cultural norms of the particular tribe they represent.

Part B – Implemented

The CFSD, the DOJ, and the Supreme Court have all included ICWA training as part of their ongoing training activities.

- The CFSD includes ICWA-related training as part of annual staff training, and training it offers to attorneys and other persons involved with the CPS system.
- The judiciary and the DOJ provided training to the Spring 2003 Judges' Association meeting.
- The DOJ provides ICWA training to prosecutors and judges.

IMPROVE COMMUNICATION AND COORDINATION WITH TRIBAL GOVERNMENTS

The audit report described the need for the CFSD to improve efforts to communicate and coordinate CPS activities with respective tribal governments. Weaknesses identified included:

- Failing to notify tribes of when Indian children are removed from a home.
- Failing to notify tribes of child custody hearings.
- Misconceptions about applicability of ICWA.
- CFSD policies do not fully address ICWA requirements.
- Inconsistent use of the ICWA checklist.
- CFSD's ICWA team is inactive.
- Allegations tribes are not involved in case activities.
- Tribal claims they have limited input into CFSD practices.

Recommendation #11

We recommend CFSD:

- A. Assure that tribal governments have sufficient opportunities to comment on policy and procedure development affecting tribal activities.
- B. Increase efforts to coordinate case management activities with tribal governments.
- C. Review policies and procedures to assure all critical elements of ICWA are addressed in the manual and ICWA checklist.

Implementation Status

Part A – Implemented

The CFSD now presents major changes to CFSD activities or operations at quarterly Native American Advisory Council meetings.

Part B – Implemented

The CFSD emphasized ICWA requirements at its annual training, and plans to continue providing related training annually.

Part C – Implemented

The CFSD modified its policy manual in October 2002, requiring quality assurance reviews to verify cases comply with ICWA requirements. The CFSD also requires caseworkers complete a checklist verifying steps are completed to comply with ICWA, which must also be reviewed and signed by a caseworker's supervisor.

INCREASE CONSISTENCY OF ICWA DOCUMENTATION

Audit work indicated inconsistencies in file documentation similar to information presented in Recommendation #2.

Recommendation #12

We recommend CFSD establish specific policies and procedures for required case file documentation to improve consistency of ICWA information and to better support social worker actions and decisions.

Implementation Status – Implemented

The CFSD modified its policy manual to provide more description of ICWA standards and requirements, and also requires supervisory review of the ICWA checklist.

IMPROVE DOCUMENTATION OF “ACTIVE EFFORTS” IN ICWA CASES

Montana statute and ICWA require CFSD to provide remedial efforts to prevent a removal, and rehabilitative efforts to reunify a family. However, ICWA requires CFSD to provide “active efforts” to prevent a removal or provide rehabilitative efforts in CPS cases involving Indian children, which is a higher legal standard than “reasonable efforts,” which are required for other CPS cases. Audit work indicated case files did not always document “active efforts” for reunification as required by ICWA, including:

- Limited or no documentation regarding services provided.
- Inconsistencies in providing services or treatment plans.

Recommendation #13

We recommend CFSD increase its focus on having documentation that clearly demonstrates the active level of effort required for ICWA cases.

Implementation Status – Implemented

The CFSD developed new forms for documenting case activities, which require caseworkers to provide more specific information about case activities and services provided to family members. The CFSD also modified its policy manual and training program to help address this recommendation.

INCREASE COMPLIANCE WITH ICWA PLACEMENT REQUIREMENTS

ICWA sets placement preference standards for Indian children that must be placed in out-of-home care, such as giving preference to members of a child's extended family or to members of a child's tribe. While ICWA recognizes the state may be unable to find a "preferred" placement, the state must demonstrate "good cause" if an Indian child is not placed in a preferred placement.

Audit work identified instances in which CFSD activities did not demonstrate compliance with ICWA placement preferences, such as:

- Not contacting known extended families members about providing care.
- Limited or no documentation of CFSD efforts to identify family or tribal members, or not documenting why potential preferred placements were not used.
- Limited availability of Native American foster homes.
- No plan for recruiting Native American foster families.

Recommendation #14

We recommend CFSD:

- A. Re-emphasize ICWA placement preferences as part of CFSD's training curriculum.
- B. Develop a methodology for improving its documentation supporting reasons for not using ICWA-preferred foster care placements.
- C. Increase emphasis on recruiting tribally accepted foster homes, which should include coordinating recruiting and licensing activities with tribal organizations.

Implementation Status - Implemented

To address all three parts of the recommendation, the CFSD has:

- Increased emphasis related to placement preferences as part of the initial training all caseworkers must complete, as well as during annual training for caseworkers.
- Increased coordination with the Montana State Foster and Adoptive Parents Association to identify and recruitment Native American foster families.
- Increased efforts towards improving communication and coordination with tribal social services, including increased sharing of resources.

The CFSD also mentioned high employee turnover in tribal agencies has presented difficulties in coordinating and establishing protocols with tribal governments.

INCREASE SUPERVISORY REVIEW OF ICWA CASES

Due to deficiencies in CFSD compliance with ICWA and the higher level of case effort required, we determined the CFSD needs to improve supervision of ICWA cases.

Recommendation #15

We recommend CFSD:

- A. Clarify policy on the type and frequency of supervisory review of ICWA case files.
- B. Expand CFSD policy to require supervisors to sign off on the ICWA checklist.

Implementation Status – Implemented

To address both parts of this recommendation, the CFSD modified policy to require supervisors review and sign-off on cases at transfer and closure. Policy also requires supervisors review and sign the ICWA checklist.

ESTABLISH CURRICULUM AND TRAINING STANDARDS

The CFSD did not have minimum training standards for social workers, although national and state organizations or agencies had recommended minimum training standards.

Recommendation #16

We recommend the CFSD:

- A. Establish minimum ongoing training standards for social workers and supervisors through the use of:
 - performance appraisals
 - input from CFSD processes and personnel
 - input from external sources such as judges and county attorneys
- B. Develop a centralized process to initiate a standardized ongoing training curriculum to address established standards and to monitor staff completion of the curriculum.

Implementation Status

Part A –Implemented

The CFSD modified its personnel training policy, which specifies minimum training standards for new employees. CFSD policy also sets ongoing training requirements for existing employees. According to CFSD management, many of the training requirements are addressed at annual training or CFSD-sponsored conferences.

Part B – Partially Implemented

According to the CFSD, training is centralized and coordinated through the Training Bureau. However, the CFSD responded it does not have the resources to monitor employee completion of training. This remains a management control weakness because it limits assurance the CFSD can readily identify or substantiate training provided to staff.

INCREASE CPS-RELATED TRAINING FOR LEGAL PROFESSIONALS

Audit work indicated inconsistencies in practices and procedures, as well as compliance with ICWA laws and regulations, in CPS cases, and identified a need for additional training for county

attorneys and district court judges. Historically, the CFSD has provided legal training to CPS system stakeholders, including county attorneys and district court judges. However, review of CFSD records indicated participation by some members of the legal professions, particularly district court judges, was limited.

The general consensus was attorneys and particularly district court judges, better relate to training provided by their peers than training provided by the CFSD.

Recommendation #17

We recommend the CFSD, Department of Justice, and Supreme Court seek ways to encourage and expand training for legal professionals in CPS-related topics.

Implementation Status – Implemented

According to information provided by the CFSD, the DOJ, and the Supreme Court, all three agencies have worked to address CPS training needs for legal professionals. Activities have included presenting ICWA training to judges and efforts to facilitate ongoing interagency communication to address CPS training needs. The DOJ has also delivered presentations to foster parent support groups, foster care review committees, the University of Montana Law School, the University of Montana School of Social Work, and the Walla Walla School of Social Work, from which Montana social workers can earn a Master in Social Work degree.

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